

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-166V

Filed: August 9, 2022

UNPUBLISHED

LISA COLBERT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

Damages Decision Based on Proffer;
Tetanus diphtheria acellular pertussis
("Tdap") Vaccine; Shoulder Injury
Related to Vaccine Administration
("SIRVA")

John Robert Howie Jr., Howie Law, P.C., for petitioner.

Ryan Pyles, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On February 1, 2018, Lisa Colbert filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioner alleges that she suffered pain and dysfunction in her left shoulder caused-in-fact by her Tdap vaccination. (ECF No. 57.)

On May 27, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for impingement, subacromial / subdeltoid bursitis, and subscapularis tendinosis caused-in-fact by her February 2, 2015 Tdap vaccination. On August 9, 2022, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$57,500.00. (ECF No. 68) In the Proffer, Respondent represented that Petitioner agrees with the proffered award. (*Id.*) Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$57,500.00 in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Daniel T. Horner

Daniel T. Horner
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

LISA COLBERT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-166V

Special Master Daniel T. Horner
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On May 27, 2022, the Court found petitioner entitled to compensation. ECF No. 63 (Ruling on Entitlement).¹ Respondent now proffers that petitioner be awarded a lump sum of **\$57,500.00**, in the form of a check payable to petitioner, for all damages available pursuant to 42 U.S.C. § 300aa-15(a).² The whole of this amount represents an award for actual and projected pain and suffering at net present value. Petitioner is a competent adult, and accordingly, guardianship documentation is not required.

¹ Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the special master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the special master's May 27, 2022, entitlement decision.

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

Petitioner has reviewed the foregoing and concurs. Petitioner agrees with the proffered award of **\$57,500.00**.³

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

TRACI R. PATTON
Assistant Director
Torts Branch, Civil Division

s/ RYAN D. PYLES
RYAN D. PYLES
Senior Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington D.C. 20044-0146
Tel: (202) 616-9847
ryan.pyles@usdoj.gov

Dated: August 9, 2022

³ This proffer does not include any award for attorneys’ fees and costs that may be awarded pursuant to 42 U.S.C. § 300aa-15(e).